

# Applying for Project Approval from BCDC

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An Overview of the  
San Francisco Bay Conservation  
and Development Commission's  
Regulatory Program

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# Introduction

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## The Bay Conservation and Development Commission

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The San Francisco Bay Conservation and Development Commission (BCDC) is a California state agency which was established to accomplish two primary goals: first, to prevent the unnecessary filling of San Francisco Bay; and second, to increase public access to and along the Bay shoreline. The Commission is responsible for carrying out two state laws—the McAteer-Petris Act and the Suisun Marsh Preservation Act—and two plans—the San Francisco Bay Plan and the Suisun Marsh Protection Plan. These laws and plans were adopted to protect the Bay and the Suisun Marsh as great natural resources for the benefit of the public and to encourage development compatible with this protection.

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## The Commission's Authority

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It is necessary to obtain BCDC approval prior to undertaking any of the following activities:

- Filling. Placing solid material, building pile-supported or cantilevered structures, disposing of material or permanently mooring vessels in the Bay or in certain tributaries of the Bay.
- Dredging. Extracting material from the Bay bottom.
- Shoreline Projects. Nearly all work, including grading, on the land within 100 feet of the Bay shoreline.
- Suisun Marsh Projects. Nearly all work, including land divisions, in the portion of the Suisun Marsh below the ten-foot contour level.
- Other Projects. Any filling, new construction, major remodeling, substantial change in use, and many land subdivisions in the Bay, along the shoreline, in salt ponds, duck hunting preserves or other managed wetlands adjacent to the Bay.

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## The Commission Approval Process

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To obtain the required Commission approval, it is necessary to complete an application form, provide the necessary additional information and exhibits, and pay a processing fee. After a complete application is filed, the Commission has a maximum of 90 days to act on the application. A public hearing will be held on an application for a major project. Thereafter, if the Commission votes to approve the project, a permit with relevant conditions will be issued.

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## Federal Projects

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In addition to carrying out its regulatory authority under state law, the federal Coastal Zone Management Act allows the Commission to review federal projects and projects that require federal approval or are supported with federal funds. The Commission carries out its “federal consistency” responsibilities by reviewing federal projects much like it does permit applications. However, the Commission cannot require federal agencies to submit permit applications and cannot impose conditions in its federal consistency decisions. Nevertheless, federal agencies and applicants for federal approvals must provide the project details, data and other material required by the form to assure that the Commission has the information it needs to evaluate federal projects.

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## Sources of Information

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There are three main sources of information to assist an applicant in securing Commission approval for a project:

- “Applying for Project Approval from BCDC”—the pamphlet you are now reading—describes the procedures the Commission follows in evaluating applications and summarizes the criteria used in determining whether a project can be approved. This information may be helpful to an applicant, but a permit application can be completed without reading this pamphlet.

- “BCDC Application Instructions” which provides detailed guidance for completing the two-part application form and specify the additional information and material that is needed for a complete application. Definitions of the terms used in the Commission’s various laws, regulations and policies are included in the Instructions booklet. When one of these terms is used in this pamphlet, it is *italicized*.
- Laws, Regulations and Plans. In an effort to be concise, “**Applying for Project Approval from BCDC**” and the “**BCDC Application Instructions**” summarize many precise provisions of the laws, regulations and plans which the Commission administers. Applicants may want to refer directly to these documents, most of which are available from the Commission’s office. Where information in this pamphlet relates to a specific legal or regulatory requirement, a bracketed [] citation is provided.

## Application Assistance

While every effort has been made to provide all the necessary instructions for fully completing an application, there is a great variety of environmental conditions around the Bay, and applicants have demonstrated considerable creativity in formulating project proposals. Therefore, applicants are strongly encouraged to consult with the Commission’s staff to determine whether a BCDC permit is needed for a project, to get advice on the likelihood of the Commission approving a particular permit application, and to get guidance on which parts of the form must be completed and what exhibits or supplementary information are needed.

The staff is also available to assist applicants in identifying the laws, regulations, and policies that the Commission uses in evaluating permit applications. To take advantage of this assistance, applicants should contact the Commission’s staff to resolve any inconsistencies between project plans and Commission policies. Applicants can also submit draft applications as their project planning evolves.

# Application Review Process

## Activities Requiring Approval

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It is necessary to obtain authorization from the Commission before undertaking any of the following activities within the Commission's jurisdiction:

- Placing solid material, pilings, floating structures, boat docks, or other **fill**.
- **Dredging** or other extraction of material.
- Making a **substantial change in use** of a structure or an area.
- Undertaking most types of **development** including some subdivisions of property.

Work on a project needing Commission authorization cannot begin until the necessary approval has been secured.

## Commission Jurisdiction

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It is necessary to obtain Commission approval before undertaking any of the activities listed above in any of the following areas:

- **San Francisco Bay**, which includes Suisun, San Pablo, Honker, Richardson, San Rafael, San Leandro and Grizzly Bays and the Carquinez Strait.
- **Certain waterways** that flow into the Bay.
- **Salt ponds** or **managed wetlands** around the Bay.
- The Commission's **shoreline band** jurisdiction which extends 100 feet inland from the Bay.
- The **primary management area** of the **Suisun Marsh**.

## Types of Permits

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Because the Commission administers two state laws, it issues two legally different permits—San Francisco Bay permits and Suisun Marsh development permits. Applications for both permits are processed in the same way, but there are different types of each kind of per-

mit. The size, location, and impacts of a project determine which type of permit is appropriate for a particular project. In turn, the type of permit that is applied for affects the information that must be provided to complete a permit application. A brief description of each type of permit follows. In an **emergency**, any of the three types of permits can be issued almost immediately if a project is needed to protect life, health, or property.

- **Regionwide Permit.** **Routine maintenance** work that qualifies for approval under an existing Commission regionwide permit can be authorized in a very short period of time by the Commission's executive director without Commission review or a public hearing.
- **Administrative Permit.** An administrative permit can be issued for an activity that qualifies as a **minor repair or improvement** in a relatively short period of time and without a public hearing on the application. Although an administrative permit application can be processed quickly, the proposed project must be reviewed against the same policies that are used to determine whether a major permit can be approved.
- **Major Permit.** A major permit is issued for work that is more extensive than a minor repair or improvement. A public hearing is held on an application for a major permit and the application may be reviewed at hearings held by the engineers and designers who advise the Commission.

## Draft Applications

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Draft applications can be submitted for any project and are strongly encouraged for large or complex projects. Draft applications allow the Commission's staff to better advise an applicant on the relevant policies, procedures and type of detailed information that is needed to complete the application. Whether or not a draft application is submitted, applicants

should consult with the Commission's staff early in a project's planning to determine the Commission's policies relative to the project and for assistance in completing the permit application.

### Processing Applications

Once the Commission receives an application, the Commission's staff has 30 days to determine whether the application is complete. If it is complete, it is officially filed and processed in one of three ways depending on the type of permit that is appropriate for the particular work that is to be authorized by the permit. Work on a project cannot begin until the application has been evaluated and approval has been issued. A permit is not effective until it has been signed by the applicant and returned to the Commission.

- **Major Permit Application.** After the Commission's staff determines that an application is complete, the staff distributes a summary of the application to the Commission and the public. No sooner than 28 days after the application has been filed and at least 10 days after the summary has been distributed, the Commission holds a public hearing on the application. Unless the applicant agrees to provide the Commission with more time, the Commission must act on a permit application within 90 days of the filing of the application. [California Government Code section 66632 ]
- **Administrative Permit Application.** After the Commission's staff determines that the application is complete, the Commission's executive director summarizes the application on a listing that is sent to the Commission, state agencies, and the general public. On this listing, the executive director indicates whether the staff proposes to approve or deny the application. This action is taken shortly after the Commission meeting unless a majority of the Commission decides it wants to more fully consider the application. If the Commission makes this decision, the applicant is notified within five days after the Commission meeting that a public hearing is necessary. Complete administrative permit applications are typically processed

in about five to eight weeks. [California Code of Regulations, sections 10600 et seq]

- **Regionwide Permit Application.** After the Commission's staff determines that an application is complete, the staff has 14 days to determine whether the work proposed is authorized by an existing Commission regionwide permit. Once this determination is made, the applicant is notified and work can begin if the application is approved. A complete regionwide permit application takes no more than 44 days to process and does not require a public hearing. [California Code of Regulations, sections 11700 et seq]

### Posting Application Notice

After it is determined that an application is complete and is ready to be filed, the Commission's staff will send a pending application notice to the applicant who must post the notice at the project site. The applicant must return a form to the Commission to indicate that the notice has been posted before the application can be filed.

### Commission Meetings

BCDC meetings are usually held at 1:00 P.M. on the first and third Thursdays of the month in Room 1194 of the State Building, 455 Golden Gate Avenue, San Francisco. A meeting notice is provided to applicants and other interested parties at least 10 days before the Commission meeting. The notice indicates what matters the Commission will consider and specifies the date, time and location of the meeting. The Commission usually takes two meetings to consider and act on an application. The public hearing is held at the first meeting. The applicant or applicant's representative can describe the project and explain why the permit should be granted. Ten minutes is usually allowed for the applicant's presentation. Members of the public also have an opportunity to express their views on the project.

At the next meeting, the Commission's staff presents its recommendation and the Commission acts on the application. The applicant (or applicant's representative) has an opportunity to comment on the staff's recommendation

before the Commission votes. Thirteen members of the 27-member Commission must vote in favor of a project in order for a project to be approved. The two members of the Commission who represent federal agencies cannot vote on permits. [Government Code section 66632, Public Resources Code sections 29520 et seq, and California Code of Regulations, sections 10360 et seq, 10400 et seq and 10550 et seq]

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#### Private Contact with Commissioners

It is Commission policy that Commissioners and their alternates avoid discussion of permit application matters with individuals or groups on any side of an issue outside of the formal public hearing process and record. If such discussions or contacts occur, at a public meeting the Commission member involved will disclose the name or names of those involved and the substance of the contact. An opportunity will then be provided for rebuttal of the information disclosed. This policy does not preclude: (1) discussions by Commissioners who represent the federal government who do not vote on permits and have to discuss permit application matters in the course of their federal duties; (2) discussions between Commissioners and with the Commission's staff; and (3) discussions carried on by Commissioners whose other public duties cause them to hold such discussions to carry out their responsibilities, although these discussions must be disclosed to the Commission.

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#### Permit Conditions

To assure full compliance with the Commission's laws and policies, permits granted by the Commission generally include several conditions that must be carried out as part of the authorized project. Typical permit conditions include requirements to construct, guarantee and maintain public access to the Bay, specified construction methods to assure safety or to protect water quality, plan review requirements that must be met before construction can begin, and mitigation requirements to offset the adverse environmental impacts of the project. Failure to comply with permits conditions can invalidate the permit and lead to fines and legal action against the permittee. To avoid unnecessary delays in project completion, applicants should consider all aspects of a proposed project with particular attention to the public

access and any necessary mitigation early in the project's design. [Government Code section 66632 and Public Resources Code Section 29500]

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#### Permit Amendments

After they are issued, permits can be amended if necessary. Amendments which materially change a project require full Commission consideration and a public hearing. Minor changes can be approved by the Commission's executive director. [California Code of Regulations, section 10800 et seq]

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#### Design Review Board

To assist the Commission in evaluating the appearance, design and provision of maximum feasible public access, many applications for major projects are evaluated by the Commission's Design Review Board, an advisory board made up of prominent architects, landscape architects, engineers, and other design professionals. Special drawings and exhibits are needed for this review. The Board advises the Commission on appearance and design issues as well as on the adequacy of the public access in a proposed project. While the Commission can deny an application if it agrees with a Design Review Board finding that the project does not include sufficient public access, the Commission cannot deny a permit solely on the basis of the appearance or design of the project. The Design Review Board's evaluation of a proposed project is normally scheduled to take place prior to the Commission's public hearing on the application, but usually after any draft environmental document on the project has been circulated.

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#### Engineering Criteria Review Board

Buildings or other facilities constructed on Bay fill pose particular risks during earthquakes. To assist the Commission in evaluating the safety of such proposals, they may be evaluated by the Commission's Engineering Criteria Review Board, an advisory panel composed of leading civil engineers, geologists, soils engineers, structural engineers, and other experts in seismic safety. Special drawings and exhibits are needed for this review. The Engineering Criteria Review Board's evaluation of a project is usually held after the Commission has issued a permit for the project.

### Additional Information

Most of the laws, plans and policies which govern the Commission's decisions are available from the Commission's office at a nominal charge. All California state agency regulations, including the Commission's, can be purchased by contacting the private company with which the state has contracted for regulation publishing. The Commission's regulations can be ordered by contacting Barclays Law Publishers, P.O. Box 3066, South San Francisco, California 94083 (415/244-6611) and asking for 14 California Code of Regulations Division 5, Chapters 1 through 17 and Appendices A through M.

### Commission Policies

To be approved, a project must meet the standards of state law, be consistent with any applicable court decisions and conform with the Commission's plans and policies. Following are brief summaries of the principal provisions that the Commission uses in considering applications for Bay fill, shoreline development, and work in the Suisun Marsh. This summary information is for general guidance only. The specific language in the relevant laws, plans and regulations govern the Commission's decisions.

### Fill Projects

If no on-land site is available for the project, if the fill is the minimum amount necessary to carry out the project, and if the public benefits of the fill clearly exceed the public detriment from the loss of water area, the Commission can approve some fill in San Francisco Bay for:

- Port facilities that are consistent with the San Francisco Bay Area Seaport Plan.
- Industries that require access to the Bay to import or export raw material or products.
- Water-related recreational uses, such as shoreline parks, marinas, fishing piers, beaches, and trails.
- Airport terminals and runways if the growth in air traffic cannot be accommodated in any other way.
- Bridges, if there is no other feasible way of handling the traffic congestion.

- Improving the appearance of the shoreline or increasing public access to the Bay through minor amounts of fill.
- Bay-related commercial recreational and public assembly facilities on privately-owned parts of the Bay.
- The replacement of deteriorated piers with Bay-related commercial recreational and public assembly facilities on publicly-owned parts of the Bay where consistent with a Commission-adopted special area plan.

The Commission cannot generally authorize fill for residences, offices, roads, general commercial buildings or industrial structures that do not need a waterfront location. When the Commission approves a fill project, a mitigation program is often required to reduce the adverse environmental impacts of the fill or to replace the natural resources that are destroyed by the fill.

### Shoreline Projects

The Commission considers only two factors in determining whether to issue a permit for work within its 100-foot *shoreline band* jurisdiction:

- Within *priority use areas* (those parts of the shoreline that the Commission has reserved for ports, water-related industries, airports, wildlife refuges and water-related recreation), the Commission can authorize only either the use for which the area has been reserved or an interim use that will not preclude the site from being converted to the priority use. Maximum feasible public access to the shoreline must be provided as part of the project.
- Outside of the *priority use areas* the Commission can authorize any use if the project provides the maximum feasible public access to the Bay consistent with the project. Applications for projects anywhere along the Bay shoreline can be denied if the required public access is not provided as part of the project. [Government Code section 66632.4]

### Suisun Marsh Projects

Within the *primary management area* of the Suisun Marsh, the Commission authorizes



*development* that is consistent with the applicable certified local protection program or, in the absence of a certified program, with the provisions of the Suisun Marsh Preservation Act and the policies of the Suisun Marsh Protection Plan. These acts, plan and programs require that:

- Existing land and water uses should continue and be protected and managed to enhance

the quality and diversity of aquatic and wildlife habitat.

- Agricultural uses should be compatible with the maintenance and improvement of wildlife habitat. [Public Resources Code section 29501 et seq]

The Commission generally cannot authorize urban uses, such as houses, industries, roads, businesses and offices within the *Suisun Marsh*.